IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.125 OF 2005
WITH
CIVIL APPLICATION NO.146 OF 2005
IN
WRIT PETITION NO.9299 OF 2004

Krishna Sahakari Bank Ltd. ..Appellant.
Vs.
Sharada Kuber Sawant & Ors. ..
Respondents.

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Mr. K.S.Bapat for the Appellant.
Mr.M.S.Topkar for the Respondents.

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CORAM : A.P.SHAH and
DR.D.Y.CHANDRACHUD, JJ.

3rd August, 2005.

P.C. :

1. Admit. By consent of the learned counsel taken up for hearing and final disposal.

2. The Krishna Sahakari Bank Limited has preferred this appeal against an interim order of the Learned Single Judge dated 7th July, 2005. The Respondent was at the material time a clerk

employed by the Petitioner and was entrusted with the work of Recurring Deposits and Current Accounts. A disciplinary inquiry was initiated and the charge-sheet came to be issued on 25th March, 1991. Two constituents of the Bank viz. Mohire and Patil held Recurring Deposit Account No.32 and 1084. Mohire was sanctioned a loan of Rs.3,200/- while Patil was sanctioned a loan of Rs.500/-. The constituents of the Bank preferred applications for withdrawal of the balance amount from their Recurring Deposit Accounts and were paid the entire amount outstanding without deducting the amounts of the respective loans. The Respondent was charged of a misconduct inter alia involving gross negligence. The misconduct was held to be proved and the disciplinary authority imposed the punishment of dismissal by an order dated 28th December, 1991. The Labour Court in a complaint of unfair labour practice held that the inquiry was lawful and proper and that the findings of the Inquiry Officer were not perverse. The Labour Court, however, held that the punishment of dismissal was shockingly disproportionate and the Bank was directed to pay compensation of Rs.50,000/-, in lieu of reinstatement. The Labour Court was of the view that reinstatement could not be

awarded in the facts of the case. Revision Applications were filed before the Industrial Court both by the Bank and the employee and by its order dated 19th August, 2004 the Industrial Court while allowing the Revision Application of the Respondent directed the Bank to reinstate the Respondent with continuity of service and with 30% backwages from the date of dismissal till the date of reinstatement.

3. The Industrial Court held thus :

> "Thus, one can find when, a serious charge of dishonesty is leveled, one would expect stricter proof because such a charge is required to be established upto the hilt and if that charge is proved, the extreme penalty is to be imposed. Thus, in my opinion, the Inquiry Officer has totally lost sight of the said fact. The Trial Court at least, should have taken into consideration this aspect of the matter but did not dive deep in the merits of the case and thereby committed gross error in reading the evidence. When the evidence on record is reasonably read, one would immediately find that it was sheer case of negligence and not of dishonesty."

4. In our view, prima facie, at this stage it does appear that the Industrial Court has misapplied itself. It is settled law that in a

disciplinary proceeding a charge of misconduct has to be proved on a preponderance of probabilities. The test which has been applied by the Industrial Court viz. that the charge is required to be established to “the hilt” is not prima facie consistent with the law laid down by the Supreme Court. The Industrial Court having held that the evidence showed a “sheer case of negligence”, the submission of the Appellant that a case for reinstatement is not made out merits serious consideration. The fact that the amount of the loan which was to be recovered was 'meager' as has been held by the Industrial Court would not prima facie be a relevant consideration once a charge of negligence is found to be established particularly on the part of an employee of a bank. In these circumstances, we are of the view that during the pendency of the proceedings before the Learned Single Judge, a stay of the order of reinstatement is warranted. We, however, clarify that all the observations contained in this order are confined only to the disposal of the application for interim relief pending the proceedings. Our observations shall not come in the way of the hearing and final disposal of the Petition on merits.

5. In the circumstances, the Appeal is allowed in part. The order of the Learned Single Judge dated 7th July, 2005 to the extent to which a stay of reinstatement was refused, is set aside. There shall be a stay of the order of reinstatement during the pendency of the Writ Petition. In so far as the backwages are concerned, the Petitioner shall within a period of 8 weeks deposit the backwages as directed by the Industrial Court before this Court. The amount upon deposit shall be invested by the Registrar in any Fixed Deposit of a nationalized bank, to be renewed thereafter pending the disposal of the Writ Petition.

6. The Appeal is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

7. In view of the disposal of the Appeal, Civil Application No.146 of 2005 does not survive and is accordingly disposed of.